

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2766 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JUBILEE INSTITUTE & ANR.

Versus

STATE OF GUJARAT & ANR.

Appearance:

None present for Petitioners

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/01/97

ORAL JUDGEMENT

1. Perused the Special Civil Application. The petitioner by this Special Civil Application prayed for quashing of the order annexure, 'C' dated 2-3-1984 of the District Education Officer, District Kheda, Nadiad, under which the appointment of a teacher by the petitioner for teaching Standard XI was not approved.

2. The facts of the case, in brief, are that, as per

the Government circular some teachers are to be appointed by the petitioner from Schedule Caste, Schedule Tribe and communities declared backward by the Baxi Commission. The petitioner has made an attempt to make the appointment of teacher from the reserved categories by publishing an advertisement in "Gujarat Samachar" in its issue dated 23rd June, 1983. In response to the said advertisement, seven applications were received. The applicants were called for interview and one of them Smt. Kokilaben Shrimali was selected by the Selection Committee for the post of Assistant Teacher. Smt. Kokilaben Shrimali was given the appointment but she did not responded and did not turned up to resume her duties. The process of selection was again undergone and one Smt. Patel Ramilaben Bhikhabhai was selected, who accepted the appointment and resumed her duties. The petitioner made an application to the State Government to sanction grant payable to the Trust according to the Act, the Rule and the Grant in Aid Code. Under the order dated 22nd March, 1984, the District Education Officer, Nadiad, informed to the petitioner that as the Trust had appointed a person holding the degree of M.A. B.Ed., the said appointment could not be said to be in accordance with the requirement of the permission granted to the petitioner Trust for opening of the school and therefore, no grant could be given to the Trust on the ground of appointment being not in compliance with the direction given by the Department. This order is under challenge by the petitioner before this court.

3. From the order, annexure 'D' dated 20th June, 1983, of the District Education Officer, it is apparent that the petitioner sought the permission of appointment of teachers and which permission has been granted. The qualifications which were necessary for the appointment of teachers were M.A./M.Com, B.Ed. in the subjects such as Economics, Psychology or logic. The petitioner has given the appointment to a teacher who possessed the qualification of M.A. B.Ed. and not M.Com. B.Ed.. From the advertisement, annexure 'A', the applications were invited from the candidates who can take subjects of Psychology, Logic, Economics, Accounts and Book-keeping. The petitioner very conveniently has not disclosed in the advertisement for which subject the candidate is required. If it is a case of Psychology and Logic, then the qualification may be of M.A., but if it is a case of Economics, Accounts and Book-keeping then certainly the qualification of M.Com is necessary. In the writ petition also, the petitioner has very conveniently avoided to give for which subject the teacher was required. It is a case of appointment of teacher for

Standard XI, and as such, the teacher, specialist in the subject, has to be given appointment. Otherwise also, it has not come out from the record of the case whether on second time, any advertisement has been issued. Not only this, but further from the writ petition it reveals that there was only one candidate, Bhatt Renuben Ganeshlal with the qualification of M.Com., B.Ed. but her candidature was not considered as there was no coram and the representatives of the Department had refused to appoint Smt. Bhatt as Assistant Teacher for the said post. In the absence of M.Com. B.Ed. candidate, the Selection Committee's second appointment of Smt. Ruffinaben Mekwan who belonged to Baxi commission took place as she was holding M.A. in Economics with B.Ed.

4. From these averments, it is clearly borne out that how conveniently the candidature of one Smt.. Renuben Ganeshlal has been excluded. In case, the coram was not there then how in the same sitting another lady has been appointed. From these facts, it is apparent that a deliberate attempt has been made by the petitioner to exclude the consideration of candidature of the candidate with the qualification of M.Com. B.Ed. and the candidature of the candidate with the qualification of M.A. B.Ed. has been selected for appointment. In case, the coram was not there then on this ground the candidature of Renuben Ganeshlal could not have been denied. The proper course would have been, in case the petitioner really wanted to make fair and impartial appointment of the person fit for the post, to consider the candidature of all the eligible candidates who applied for the post. The way and the manner in which the appointment of Ruffinaben Mekwan has been made gives out that Selection Committee has favoured her. Where the appointment is made on exclusion of the eligible candidate, on the grounds which are not tenable then nothing wrong has been committed by the respondent in passing of the order impugned in this Special Civil Application. The substance of the matter has to be considered and from the facts which the petitioners themselves have given in this Special Civil Application it is apparent that the appointment of Ruffinaben was contrary to Articles 14 and 16 of the Constitution of India leaving apart the question of qualifications. When once this fact has come to the notice of this court then it will not allow to perpetuate any illegality, and the order impugned in this Special Civil Application cannot be interfered with. Though the reason given by the respondent not to release the grant may not be correct, but the appointment made in the present case of one Smt. Ruffinaben Mekwan was contrary and made in violation of

Articles 14 and 16 of the Constitution of India. Hence,
no interference is called for.

5. In the result, this Special Civil Application
fails and the same is dismissed. Rule discharged.

zgs/-